

# WIPO



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## INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

**Fifth Session**  
**Geneva, July 7 to 15, 2003**

PARTICIPATION OF INDIGENOUS AND LOCAL COMMUNITIES

*Document prepared by the Secretariat*

### I. OVERVIEW

1. This document reviews mechanisms for facilitating the participation of indigenous and local communities in the work of WIPO concerning intellectual property and genetic resources, traditional knowledge and traditional cultural expressions, in particular in the work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore ('the Committee'). It addresses the specific question of the possible provision of financial support for the participation of indigenous and local communities in sessions of the Committee, as a means to facilitate their involvement in WIPO's work on these issues.

2. As requested by the Committee at its fourth session, the WIPO Secretariat has obtained information on the practices of other United Nations agencies and relevant intergovernmental organizations in facilitating the participation of non-governmental organizations, including the modalities of selection, accreditation and application of funding, if applicable. On the basis of such information and on the basis of the Secretariat's own independent analysis, this document presents a range of detailed possible options available to the Committee for its consideration.

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## II. BACKGROUND

3. The Committee, at its fourth session (December 9 to 17, 2002), concluded that:

“(i) There was unanimous support for directly involving as much as possible representatives of indigenous and local communities in the work of the Intergovernmental Committee.

(ii) A number of Delegations expressed support for WIPO directly financing a certain number of representatives of such communities. There was, however, no consensus in this issue and there was a strong need expressed to clarify the modalities in this context.

(iii) As regards suitable mechanisms for facilitating the involvement of representatives of such communities, the Committee:

- encouraged Member States to include such representatives in their national delegations;
- endorsed and encouraged the other measures in this respect indicated in paragraph 13 of document WIPO/GRTKF/IC/4/12; and
- requested the Secretariat to prepare by mid -April for the Committee's fifth session, a report that outlines a range of options for facilitating a more formalized participation of indigenous and local communities, and indications of modalities on how these options could be implemented by the Committee.

That report should include information on the practice of other United Nations and relevant intergovernmental organizations in facilitating the participation of non-governmental organizations, including the modalities of selection, accreditation and application of funding, if applicable. On the basis of such information about practices in other organizations and on the basis of the Secretariat's own independent analysis, the report should present a range of detailed possible options available to the Committee. These options should include:

- an analysis and update of the list of measures included in paragraph 13 of document WIPO/GRTKF/IC/4/12;
- facilitating the participation of the United Nations Permanent Forum on Indigenous Issues in the future work on the issues dealt with by the Committee;
- providing financial support for the participation of indigenous and local communities; and
- a transparent mechanism to determine the number of participants, the process for selecting those eligible under some funding process, and the capacity in which they would participate.

This report should form part of the basis for the general discussions which are expected to take place at the Committee's fifth session on future work on the issues presently dealt with by the Committee.”<sup>1</sup>

4. Document WIPO/GRTKF/IC/4/12 describes previous proposals and discussions within the Committee on this subject. The WIPO Program and Budget Committee in September 2002 and the 37<sup>th</sup> Series of the Assemblies of the Member States of WIPO held from September 23 to October 1, 2002,<sup>2</sup> also considered the question, the General Assembly agreeing that (Document A/37/14, paragraph 290):

“(i) the Permanent Forum on Indigenous Issues should be invited to participate in the December 2002 session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore;

(ii) Member States should be encouraged to include representatives of indigenous and local communities on their delegation to the Intergovernmental Committee;

(iii) following consultations including the Secretariat and regional groups, the Intergovernmental Committee should consider suitable further mechanisms, as appropriate, for facilitating the involvement of representatives of indigenous and local communities in its work for the 2003 meetings and to be reflected in its report to the General Assembly in 2003.”<sup>3</sup>

5. This document sets out a range of options in response to the Committee's request for a study of the issue. These options are tentative, since any approach taken would depend in part upon decisions yet to be made on the future scope and nature of WIPO's work on genetic resources, traditional knowledge and traditional cultural expressions, including on the future form, mandate and terms of reference of intergovernmental discussions on these topics.<sup>4</sup> These questions will be considered at the WIPO General Assembly taking place in September 2003. Additionally, the WIPO Program and Budget for 2004 - 2005 will be adopted at the same session of the General Assembly. As it is likely that any funding mechanism adopted by Member States will apply for the first time at a Committee session taking place in 2004 under the 2004 - 2005 Program and Budget, any option with financial implications may also depend to some degree upon future budgetary decisions. In general, the extent of financial support for the Committee's operations is dependent on available budgetary resources.

6. For these reasons, any option selected by the Committee may need to be tailored and adjusted to fit in with the future format and mandate of WIPO's work on these issues, including the future nature, format, mandate and frequency of Committee sessions. The Committee's recommendations, therefore, on formalized mechanisms for the enhanced involvement of indigenous and local communities would form part of a coherent set of recommendations on the future of the Committee and on budgetary matters, to be presented to the September 2003 General Assemblies.

<sup>1</sup> WIPO/GRTKF/IC/4/15, para. 60.

<sup>2</sup> See A/37/14, paras. 245 and 263 to 290.

<sup>3</sup> A/37/14 Prov., para. 288.

<sup>4</sup> WIPO/GRTKF/IC/4/15, para. 21.

7. In preparing this document, requests for information were sent to the following United Nations agencies and intergovernmental organizations: Food and Agricultural Organization (FAO); International Labour Organization (ILO); Office of the High Commissioner for Human Rights (OHCHR); the Secretariat of the Convention on Biological Diversity (SCBD); United Nations Conference on Trade and Development (UNCTAD); United Nations Development Programme (UNDP); United Nations Environment Programme (UNEP); United Nations Educational, Scientific and Cultural Organization (UNESCO); United Nations High Commissioner for Refugees (UNHCR); United Nations Population Fund (UNFPA); United Nations Children's Fund (UNICEF); United Nations Office at Geneva (UNOG); United Nations Institute for Training and Research (UNITAR); the World Bank; and the World Trade Organization (WTO).

8. The information received from these agencies and organizations disclosed a diversity of mechanisms and practices to facilitate the participation of NGOs in their meetings and programs, and many of them are reported on in this document. The majority of the mechanisms and practices have already been discussed by the Committee. Several of the agencies and organizations do not have any special procedures directly to fund NGO or indigenous and local community participation. Inputs and comments on this matter were also sought and received from the UN Permanent Forum on Indigenous Issues.

### III. FACILITATING INVOLVEMENT AND PARTICIPATION IN GENERAL

9. Member States have expressed the view on several occasions that the participation of indigenous and local communities in the activities of the Committee is essential to the successful fulfillment of the Committee's mandate. Member States have also expressed their support for directly involving as much as possible representatives of indigenous and local communities in the Committee's work.

10. As regards suitable mechanisms for facilitating such involvement, Member States have endorsed and encouraged the measures set out in paragraph 13 of WIPO/GRTKF/IC/4/12, and in particular encouraged Member States to include representatives of indigenous and local communities in their national delegations (see the conclusions reached at the Committee's fourth session, quoted in paragraph 3 above). These measures consisted of:

- increased and more regular cooperation with the Permanent Forum on Indigenous Issues, in view of its function of promoting "the integration and coordination of activities relating to indigenous issues within the UN system;"
- greater participation of representatives of indigenous and local communities on national delegations;
- direct financial support for the participation of representatives of indigenous and local communities in the Committee, either on national delegations or representatives of accredited *ad hoc* observers;
- specific briefings and consultations for NGO representatives, particularly representatives of indigenous and local communities, in the framework of Committee meetings;
- consulting with interested representatives of indigenous and local communities on draft documents and other materials being developed for the Committee; and

- involvement of indigenous and local communities in regional and national consultations and workshops aimed at developing focussed input for the Committee, including funding or otherwise supporting their involvement in these meetings.

11. As was noted at the Committee's fourth session, all of these measures have already been implemented or are in the process of being implemented.<sup>5</sup> The conclusions adopted at the fourth session requested an update of these measures. The following measures were suggested by Member States and other participants during the session:

- (a) greater involvement of indigenous and local communities in national processes, such as in the development of national policies and of statements to be made by States at Committee sessions;<sup>6</sup>
- (b) the participation of indigenous and local community representatives on expert panels;<sup>7</sup>
- (c) the involvement of representatives of indigenous and local communities as co-chairs of working groups;<sup>8</sup>
- (d) capacity-building at the national and local levels;<sup>9</sup>
- (e) the participation of indigenous and local community experts in the analysis of papers and reports being produced for the Committee;<sup>10</sup>
- (f) the inclusion of an indigenous staff member in the unit dealing with the subjects covered by the Committee;<sup>11</sup>
- (g) development of a working relationship with the United Nations Working Group on Indigenous Populations;<sup>12</sup> and
- (h) allowing indigenous and local communities to make available to Member States comments and papers on the issues under discussion,<sup>13</sup> and for time to be allocated on the Committee's agenda for adequate responses to them documents by Member States.<sup>14</sup>

12. Certain of these proposals are in part addressed directly to Member States, such as the proposals in paragraphs (a) and (d), but capacity building programs undertaken by WIPO have also supported their implementation at the national and regional levels. Of those proposals directed to the Committee itself, some have already been implemented. For example, certain documents and materials prepared for the Committee are published in draft form for public comment, such as the draft Toolkit on Intellectual Property Management when Documenting Traditional Knowledge and Associated Genetic Resources.<sup>15</sup> These are disseminated as widely as possible in order to encourage wide stakeholder participation. Particular attention is paid to consulting on them with representatives of indigenous and local

<sup>5</sup> For example, see WIPO/GRTKF/IC/4/15, para. 26.

<sup>6</sup> WIPO/GRTKF/IC/4/15, para. 40.

<sup>7</sup> Ibid., para. 44.

<sup>8</sup> Idem.

<sup>9</sup> Ibid., para. 45.

<sup>10</sup> Idem.

<sup>11</sup> Idem.

<sup>12</sup> Ibid., para. 46.

<sup>13</sup> Ibid., paras. 50 and 51.

<sup>14</sup> Ibid., para. 50.

<sup>15</sup> Document WIPO/GRTKF/IC/4/5.

communities and NGOs who participate in sessions of the Committee or with whom WIPO has already built up a consultative relationship. In addition, as a matter of course, comments are invited on most of the working documents prepared by the WIPO Secretariat for purposes of the Committee. This approach has characterized WIPO's work in this area for some time. For example, the Report on WIPO's fact-finding missions in 1998 and 1999 was based on very extensive consultations with indigenous and local communities and was widely disseminated in draft for public comment. WIPO has for several years followed the deliberations of the United Nations Working Group on Indigenous Populations, and has previously participated in certain of its expert processes.<sup>16</sup>

*Making available of comments and papers by observers*

13. The survey of other international organizations showed a range of possible approaches to facilitating the availability of comments and papers representing the views of observers. For example:

- (a) the Secretariat of the CBD publishes on its website information received from NGOs in response to specific requests for information, case-studies or comments issued by the Secretariat;
- (b) the World Trade Organization (WTO) maintains a NGO section on its website, and makes available an update of NGO position paper on a monthly basis;
- (c) the Food and Agricultural Organization (FAO) works closely with an International NGO/CSO Planning Committee which facilitates the interface between the FAO and NGOs, civil society and social movements. This NGO/CSO process has a website with a section for indigenous peoples as one of the major groups;
- (d) at the United Nations Conference on Trade and Development (UNCTAD), representatives of NGOs may circulate written statements at meetings on matters relating to the agenda.

14. Within WIPO itself, comments and contributions on issues, processes and reports are invited from time to time from not only States but also organizations, user groups and the public in general, and these are made available for browsing on WIPO's website. Once again, the draft Report on WIPO's fact-finding missions in 1998 and 1999 is a good example. Comments on it were invited and all those received are available on the WIPO website.<sup>17</sup> The Patent Agenda is another example – comments have been invited from “governments, organizations and users” and those received are available online.<sup>18</sup>

15. The Committee, at its first session (April 30 to May 3, 2001), approved a proposal to establish an Electronic Forum “to exchange information and facilitate discussions between Member States and observers.” The proposal had suggested that the Forum “could be used by Member States and observers to exchange national experiences, including relevant legislation, technical papers prepared by experts in the field and proposals, and as a forum for discussion and analysis of such national experiences, papers and proposals.” The WIPO website devoted to Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (<http://www.wipo.int/globalissues/index.html>) has since then fulfilled many of the functions of such an electronic forum.

<sup>16</sup> Such as the Seminar on the Draft Principles and Guidelines for the Protection of the Heritage of Indigenous People, February 28 to March 1, 2000.

<sup>17</sup> See <<http://www.wipo.int/globalissues/tk/ffm/ffm-report-comments/index.html>>

<sup>18</sup> See <<http://patentagenda.wipo.int/rfc/index.html>>

16. Following on from the above, an option could be to establish a specific page on the part of the WIPO website devoted to the Committee, for making available comments, technical papers, national experiences and others such documents submitted by accredited observers. In order to be practicable, such documents would be posted online in the form and in the languages in which they were received, and only documents received in electronic form could be posted on the website. In order to enable participants in Committee sessions to be aware of which comments, papers and other material have been submitted by observers, the WIPO Secretariat could, at each Committee session, make available a written list of them. The list could include reference to any comments, papers and other materials received from observers by the Secretariat only in paper form, which the Secretariat could copy and make available, in the form received, to any participants asking for copies.

*The Permanent Forum on Indigenous Issues*

17. The Committee has encouraged close cooperation between the Committee and the Permanent Forum on Indigenous Issues, and at the fourth session requested options and modalities for facilitating the participation of the Permanent Forum in the future work of the Committee.

18. The Permanent Forum is a subsidiary body of ECOSOC, comprising 16 members serving in their personal capacities as independent experts. The Forum's mandate is to:

(i) provide advice and recommendations on indigenous issues to ECOSOC and UN agencies;

(ii) promote the coordination of activities relating to indigenous issues within the UN system; and

(iii) prepare and disseminate information on indigenous issues. <sup>19</sup>

19. As a subsidiary body of ECOSOC, the Permanent Forum already has the right to participate as an observer in Committee sessions. The standard invitation to participate in Committee sessions addressed by WIPO to ECOSOC applies also to the Forum. In addition, as decided by the WIPO General Assembly, the Forum was specifically invited to participate in the Committee's fourth session and did so. <sup>20</sup>

20. In order further to facilitate the Forum's participation, one or more of the following measures could be considered by the Committee:

(a) the WIPO Secretariat could make it a regular practice to send a specific invitation including the relevant working documents directly to the Permanent Forum to attend each Committee session;

(b) during Committee sessions, the WIPO Secretariat could organize a separate briefing or panel discussion at which the Forum could interact and exchange information with States and other participants;

<sup>19</sup> E/2000/22.

<sup>20</sup> The Permanent Forum's statement is reported at paragraph 43 of document WIPO/GRTKF/IC/4/15.

(c) members of the Forum could also be invited to participate in national and regional consultations and meetings concerning the work of the Committee, and their participation financed in the regular manner for such activities;

(d) a certain number of Forum members could, subject to budgetary policy considerations and available resources, be financed by WIPO to participate in Committee sessions. Since the most recent consideration of this issue within WIPO, the UN General Assembly has passed a consensus resolution which invites UN agencies and others to assist the Forum in carrying out its mandate.<sup>21</sup> Assistance with participation in the work of the Committee may be an appropriate response to this invitation. In previous contacts with the Forum, the Forum has indicated that approximately two members of the Forum would be devoted to following intellectual property issues and in particular the work of WIPO. If resources permit, those two members could be financed by WIPO to participate in Committee sessions as a moderate but concrete form of assistance with the Forum's mandate.

#### IV. PROVIDING FINANCIAL SUPPORT FOR PARTICIPATION

21. A number of Committee Members have expressed in principle agreement to the direct financial support for the participation of indigenous and local communities in Committee sessions. However, even if there were consensus in principle on this proposition, there is no clear understanding of the options and modalities that would be used to secure and apply such financial support. This part of the document sets out possible options and modalities in the event that the Committee wishes to provide such financial support. The Committee may decide not to support any of the proposed options and modalities, or it may propose additional options and modalities.

22. In common with WIPO practice for the three subsidiary bodies (such as WIPO standing committees), funds have been earmarked to support the participation in the Committee of delegations from developing countries and countries comprising the group of Central European and Baltic States, and the Caucasian, Central Asian and Eastern European countries. This has included five participants each from five regions and one from China, amounting to 26 funded delegates for each Committee session. As for the standing committees, the level of such financial support is dependent on available budgetary means.

23. Although indigenous and local communities and NGOs have received funding from WIPO to participate in national and regional meetings, there is no precedent for them to receive direct funding to participate in formal sessions of WIPO standing committees or committees such as the Intergovernmental Committee. The threshold question is therefore whether WIPO Member States agree in principle on the funding of non-governmental participants in the work of the Committee. Any such recommendation would likely need to be made on the basis that it was a response to the particular concerns and unique nature of the Intergovernmental Committee, and that no precedent was set for other aspects of WIPO's activities.

24. Increasing interest in the work of the Committee among indigenous and local communities has led to growing numbers of communities and organizations seeking accreditation, and there are currently 72 accredited *ad hoc* observers, many of which represent

<sup>21</sup> Paragraph 3 of A/RES/57/191, adopted by the General Assembly without a vote, December 18, 2002.



indigenous and local communities. However, a number of these observers have indicated that they have encountered difficulties attending Committee sessions due to lack of funding.

### *Specific issues*

25. Apart from the in-principle question, consideration of financial support for the involvement of representatives of indigenous and local communities would also need to address:

- (a) the scale of the support that may be given to facilitate such participation, in particular the number of participants whom would receive funding;
- (b) the capacity in which they would participate (on national delegations, as representatives of *ad hoc* observers, or as representatives of intergovernmental organizations which are observers). Related to this issue is the accreditation question. Observers need specific accreditation to participate in sessions of the Committee (either formal accreditation to WIPO as a whole, or the fast-track *ad hoc* accreditation for sessions of the Committee only). If decision as to funding and accreditation were not linked in some way, an organization could conceivably receive funding to attend an IGC session but not be accredited to do so;
- (c) the criteria used to select funded participants;<sup>22</sup>
- (d) the source of the funds (for example, whether from the regular WIPO budget or extra-budgetary sources); and
- (e) the mechanism(s) used to select funded participants.

The actual availability of funds, and the level of resources available, is of course also a key practical consideration, regardless of the source of funds.

### *Certain guiding principles*

26. At the Committee's fourth session members identified several principles that they stated ought to guide the consideration of possible funding modalities. These included:

- (a) the mechanism used to determine the number of participants, the process for selecting those eligible to receive funding and the capacity in which they would participate in Committee sessions, should be transparent, representative and ensure equitable geographical distribution;<sup>23</sup>
- (b) the funding of indigenous and local communities would be separate from their inclusion on national delegations;<sup>24</sup>
- (c) there should be no negative impact upon WIPO's technical cooperation work or the funding of government delegations to the Committee;<sup>25</sup>
- (d) the selection of recipients of funding should be made in close consultation with Member States from which the relevant NGO or community originated, including consultations with regional and local groups. In other words, some form of governmental role should be built into the selection process;<sup>26</sup>

<sup>22</sup> WIPO/GRTKF/IC/4/15, para. 42.

<sup>23</sup> WIPO/GRTKF/IC/4/15, paras. 21, 23, 33.

<sup>24</sup> WIPO/GRTKF/IC/4/15, para. 22.

<sup>25</sup> WIPO/GRTKF/IC/4/15, paras. 22, 23, 27, 28.

<sup>26</sup> WIPO/GRTKF/IC/4/15, paras. 23, 42, 56.

- (e) funding of indigenous and local communities to participate in sessions of the Committee should not create a precedent for other WIPO committees;<sup>27</sup>
- (f) the funding of indigenous and local communities should not detract from the Committee's intergovernmental nature<sup>28</sup> or the technical, intellectual property -related nature of its deliberations.<sup>29</sup>

27. In addition, the Secretariat's research into the practices of other agencies and relevant intergovernmental organizations, has identified two further principles which could also be taken into account in designing appropriate funding options and modalities:

- (a) these selection procedures should include a transparent application process whereby indigenous and local communities can apply for funding. Officials who are responsible for the administration of the United Nations Voluntary Fund for Indigenous Populations underlined the value of establishing a transparent application process, as this lends credibility and certainty to the funding mechanism;
- (b) the funding mechanisms should be as simple and cost -efficient as possible, taking into account that any mechanism that the Committee may wish to establish may be of fund no more than a relatively limited number of representatives of indigenous and local communities per Committee session. The United Nations Voluntary Fund for Indigenous Populations, for example, requires an extensive administrative infrastructure (see the Annex).

#### *Options and modalities*

28. Since the range of options for scale of support, capacity of participation and selection criteria are relatively limited, these are discussed first as the basis for a detailed discussion of the more complex issues of the source of funds and the selection mechanism.

#### (a) Scale of Support

29. This concerns principally the number of funded participants. Possible numbers depend upon issues such as:

- (i) budgetary constraints;
- (ii) the need to consider geographic distribution; and
- (iii) the possible need for congruence with the level of support for Member State representatives, and with the regional method used to determine funded States. In common with WIPO practice and subject to budgetary means, funding is provided for one official each from five States from each of the five regions, plus one official from China, as already explained.

30. The goal of enhanced participation by indigenous and local communities would suggest a reasonably wide range of cultural and geographical backgrounds, as well as diverse experience and expertise relating to the different issues on the Committee's agenda. Concerns have also been expressed that the funding of indigenous and local communities should not detract from existing support for developing country representation, nor detract from the Committee's intergovernmental nature. Previous background discussions have referred to the figure of approximately ten funded representatives per Committee session.

<sup>27</sup> WIPO/GRTKF/IC/4/15, paras. 22, 24, 27.

<sup>28</sup> WIPO/GRTKF/IC/4/15, para. 22.

<sup>29</sup> WIPO/GRTKF/IC/4/15, paras. 22, 23.

31. Taking all these factors into account, one option could be for funded participants to be selected according to the same regional scheme used to determine funding provided to States, as described above. This would ensure wide cultural and geographical distribution. In order to reach a figure of approximately 10, and using the same “five regions plus China” scheme, it could be suggested that funding for indigenous and local community participation be provided to two countries in each of the five regions, plus China – this would lead to a total of 11 funded participants. Given the current extended duration of Committee sessions, funding for 11 indigenous or local representatives would amount to an estimated CHF 80,000 per session, or approximately CHF 60,000 if Committee sessions return to five days in duration.

32. In the event that the Committee recommends that two members of the Permanent Forum on Indigenous Issues be funded to participate, as discussed above, the representation of indigenous and local communities would be enhanced further.

(b) Capacity of Participation

33. A community or organization may either participate as a member of a national delegation, or in its own capacity as an observer. The choice of appropriate option may depend on the funding model selected, the wishes of the relevant community or organization, and the wishes of the relevant State.

34. In the event that a funded community or organization wishes to participate as an observer it will require accreditation to do so. To avoid a situation where a community or organization receives funding to participate but is not accredited, it seems advisable to link the accreditation and funding procedures. There is a relatively simple way of doing so: the Committee could decide that only those communities and organizations that have already received accreditation at WIPO or to the Committee under the *ad hoc* procedure can receive funding. Accordingly, in the discussion below on Selection Criteria, one of the criteria suggested is that only accredited organizations and communities be entitled to receive funding.

(c) Selection Criteria

35. Drawing upon previous statements of Committee participants and the experiences of other UN Agencies and relevant intergovernmental organizations (in particular, the criteria used by the UN Voluntary Fund for Indigenous Populations) the following may be suggested as possible criteria:

(i) the recipients of funding should be authorized representatives of indigenous and local communities and their organizations. The meanings of “indigenous” and “local” communities are not the subject of clear international agreement. However, officials administering the United Nations Voluntary Fund for Indigenous Populations advised the WIPO Secretariat that, despite the absence of agreed definitions, the Board of Trustees of that fund has seldom had difficulty in applying the criterion that it uses, namely that funding recipients be “representatives of indigenous communities and organizations”;

(ii) funding recipients should be unable to attend meetings of the Committee without the financial assistance;

(iii) funding recipients should be able to contribute to the Committee’s discussions by virtue of knowledge of and experience with intellectual property generally and/or, more specifically, the protection of traditional knowledge and traditional cultural expressions,

and/or access to genetic resources and benefit-sharing. The funded recipients for each session should, as a group, have expertise and/or experience in all three of the Committee's themes;

(iv) the selection of recipients for each session should as far as possible secure a broad geographical distribution and gender equity;

(v) funding recipients should if possible be persons living in their own community and country and able to report back to and receive instructions from their community;

(vi) the communities and organizations should already be accredited to WIPO as observers, or have received *ad hoc* accreditation to the Committee;

(vii) the selection of funding recipients should strike a balance between maintaining a degree of continuity among the persons receiving funding from one Committee session to another, and the need for equity in ensuring that a diversity of persons receive funding.

(d) Source of Funds

36. It has not been WIPO practice to provide direct funding for NGOs to take part in its formal meetings. However, on occasion Member States have used the funds provided by WIPO to them to fund representatives of indigenous and local communities to participate as members of their national delegation taking part in the Committee. Thus, WIPO funds have been used in the past to fund indigenous and local communities indirectly.

37. Following statements made by Member States on previous occasions, it appears that there is no agreement on the use of WIPO's regular budget to directly fund indigenous and local community participation in the Committee, and that consensus on this point may be difficult to obtain. Concerns have been raised about possible negative impacts upon WIPO's technical cooperation work and on the funding of government delegations to the Committee, and the creation of an unsustainable precedent for other WIPO committees. For these reasons, the direct funding of indigenous and local communities to participate in Committee sessions out of WIPO's regular budget may not be viable at this stage.

38. However, there are other options which do not involve direct funding out of the regular budget, such as (i) indirect funding out of the regular budget and (ii) direct funding out of extra-budgetary resources. These are the two main available options, and referred to as Option 1 and Option 2.

Option 1: Indirect funding out of regular budget

39. This option is use of WIPO's regular budget to fund indigenous and local community participation indirectly, by providing funds to Member States in order for them to select the indigenous and local community representative who would participate in Committee sessions.

(a) A major advantage of this option is its simplicity. At present, WIPO finances the participation of a geographically diverse number of States in each of the Committee's sessions, as explained earlier. Following on from the discussion above on the number of funded participants, under this Option 1, 11 of those States would receive additional funds to each fund one indigenous and local community representative. The selection of the recipients would be made by the States themselves, using the criteria adopted by the Committee. There would be no need for the Committee to establish an application process or selection mechanism (although States may do so at the national level). The funded representatives of indigenous and local communities could either be members of their national delegations or

participate as observers.

(b) Disadvantages of this option however include that representatives of indigenous and local communities have called for direct funding to ensure their distinct role and input. The absence of an application process and selection mechanism established by the Committee may lead to suggestions that this option is less transparent and representative. As the funds under this Option 1 would come from WIPO's regular budget, this option depends on budgetary means and may at least indirectly impact upon WIPO's development cooperation program and funding of government participation. States which receive funding to participate in Committee sessions can change from session to session, and so the communities receiving funding will also change, thus reducing continuity of input to and feedback from the Committee (however, giving a wide range of communities from geographically diverse countries the opportunity to participate could also be seen as an advantage).

#### Option 2: A WIPO Voluntary Fund

40. Several States have suggested that extra-budgetary resources be used to fund indigenous and local community participation.<sup>30</sup> In this regard, a specific proposal that has been made is for the use of a voluntary extra-budgetary mechanism,<sup>31</sup> such as a voluntary fund. The United Nations Voluntary Fund for Indigenous Populations (the "UN Indigenous Populations Fund") is an example of such a fund, and it is described in the Annex.

41. This option therefore is for WIPO to establish its own Voluntary Fund modeled to the extent appropriate on the UN Indigenous Populations Fund. This would entail *inter alia*:

(a) establishment of a transparent application process through which indigenous and local communities and organizations can apply for funding;

(b) the Fund could, as in the case with the UN Indigenous Populations Fund, receive contributions from States, NGOs and other private or public entities. A certain amount of fund-raising would have to be undertaken by the WIPO Secretariat;

(c) the creation of a mechanism(s) or procedure(s) to select funding recipients from among the applicants. There are several options in this respect, and these are discussed in the next section.

42. A significant difference between Option 1 and Option 2 is that were the Committee to select Option 1, an amount of funds would be made available from the regular budget in order to fund 11 (or other number decided upon by the Committee) participants for each Committee session. Under Option 2, the actual number of funded participants would depend upon the amount of funds contributed to the WIPO Voluntary Fund. At present, there is no indication of the level of funding that may be provided to such a Fund. Second, the management of a funding mechanism comprising an application process and a Voluntary Fund implies a reasonably elaborate administrative system. As an example, the UN Indigenous Populations Fund requires the services of 3 full-time staff members, who receive, study and reply to all applications received; prepare the applications for consideration by the Fund's Board of Trustees; liaise with the Secretary General to receive his selections; and, then arrange for the travel of the funding recipients. In 2002, the Indigenous Populations Fund received a total of approximately 700 applications, and approximately 110 travel grants were awarded. See further Annex A for the tasks and duties of the staff administering the Fund. While it is not

<sup>30</sup> WIPO/GRTKF/IC/4/15, paras. 22, 23, 27, 28.

<sup>31</sup> WIPO/GRTKF/IC/4/15, para. 27.

expected that the WIPO Fund would receive as many applications, an appropriate administrative system would need to be established and maintained, the cost of which may approach the suggested level of funding of participants' travel.

(e) Selection Mechanism

43. Previous discussions have identified certain specific mechanisms for consideration, and these are analyzed below. These possible mechanisms would flank a WIPO Voluntary Fund, should that be decided upon by the Committee. Recalling that the establishment of a WIPO Voluntary Fund has been referred to as Option 2, the possible options for a selection mechanism are referred to as Options 2A and 2B, to reinforce the notion that the mechanisms under discussion are intended to accompany a possible WIPO Voluntary Fund.

44. One of the principles mentioned by several States is relevant here, and that is the need for some form of governmental oversight in the selection process. There are several possible options:

(i) on the one hand, it could be argued that the need for governmental oversight is met by the selection criterion that only organizations and communities already accredited by the Committee may receive funding. This is the simplest option;

(ii) the other option is to build into each of the options below an additional step that would give States a direct say in the selection of funding recipients. This selection mechanism would then in fact recommend a list of recipients for final selection by States (which could be all the States in the Committee, just the regional coordinators and/or just the States from which the relevant community or organization comes);

(iii) a third option is to require the selection mechanism to consult with States (perhaps represented by regional coordinators) before making the final selection.

45. Further considerations relevant here are the wish of the Committee for increased cooperation with the Permanent Forum and the Forum's position and mandate with the UN system, suggesting that the Forum plays some role in the selection process.

46. Certain of these selection mechanism options below have governmental oversight already built into them (namely Option 2B – selection through regional coordination). Paragraphs (ii) and (iii) are therefore only relevant to Option 2A.

*Option 2A: Voluntary Fund; recipients identified by a Board of Trustees*

47. Option 2A is for the creation by WIPO of a Board of Trustees along the lines of the Board of Trustees of the UN Fund for Indigenous Populations. The WIPO Board of Trustees would comprise indigenous and local community representatives from all regions. The Board would receive from the WIPO Secretariat all the applications received, and it would identify recipients of the funding (optional – for consideration and final selection by the Committee as a whole, or by the regional coordinators and/or the States from which the recommended communities and organizations come). Following again the example of the UN Voluntary Fund for Indigenous Populations, the Board would meet probably once a year, in Geneva, for 2 or 3 days at a time depending on the number of applications received (the WIPO Secretariat's research revealed that it is advisable that the members of such a Board meet physically to consider the applications received, rather than electronically for example). In order to ensure that the Board is itself representative and credible, it could be constituted by the WIPO Secretariat in consultation with, for example, the Permanent Forum on Indigenous

Issues of the Board of Trustees of the existing UN Fund for Indigenous Populations. The Board would apply the agreed selection criteria, and could consult with the Permanent Forum for its advice and views before making its selection.

(a) Advantages of this Option 2A may include that this mechanism would draw upon the experiences and follow the example of an existing UN mechanism that is in general regarded as representative, credible and transparent.

(b) Disadvantages of this option may include:

(i) the process for selecting the Board will require extensive consultations and the Board may take some time to establish;

(ii) while the Voluntary Fund option is reasonably complex in itself, as discussed earlier, the administrative aspects associated with managing a Board of Trustees add further complexity to the administration of such a Fund. The meetings of the Board will also have significant budgetary implications, requiring probably the support of a full-time staff member, drawing resources away from the core objective of enhanced participation of indigenous and local communities. It may be considered whether it is worth establishing such a system in order to select only approximately 11 funded persons per Committee session, since it would limit funds available to support indigenous and local community participation.

*Option 2B: Voluntary Fund; recipients identified through regional coordination*

48. This Option 2B is for the referral of the list of applicants to regional coordinators, for the funded participants to be selected by them through intra-regional consultations with input from the relevant national governments. The list of applicants could also initially be referred to the Permanent Forum for its advice and views which the regional groups could take into account when making these selections.

(a) An advantage of this option would be that the need for geographical distribution would be secured. No new entity, such as a Board of Trustees, would need to be established, and this option would not entail any expenditure.

(b) A disadvantage might be that such intra-regional consultations and obtaining national governmental input may be cumbersome and time-consuming.

## V. SUMMARY OF OPTIONS

*Facilitation of the involvement of indigenous and local communities more generally*

49. The following options have been discussed above:

(a) a specific page could be established on the part of the WIPO website devoted to the Committee, for making available comments, technical papers, national experiences and others such documents submitted by accredited observers;

(b) the WIPO Secretariat could make it a regular practice to send a specific invitation and the relevant working documents directly to the Permanent Forum to attend each Committee session;

(c) during Committee sessions, the WIPO Secretariat could organize a briefing or panel discussion at which the Forum could interact and exchange information with States and other participants;

(d) members of the Forum could also be invited to participate in national and regional consultations and meetings concerning the work of the Committee, and their participation financed in the regular manner for such activities;

(e) a certain number of Forum members could be financed, subject to budgetary means, by WIPO to participate in Committee sessions. Doing so would assist the Forum fulfill its mandate as indicated above. The UN General Assembly has invited UN Agencies and other states to assist the Forum in carrying out its mandate.<sup>32</sup> In previous contacts with the Forum, the Forum has indicated that approximately two members of the Forum would be devoted to following intellectual property issues and in particular the work of WIPO. Those two members could be financed to participate in Committee sessions.

### *Provision of financial support*

50. In the event that the Committee decides to make provision of funding to facilitate indigenous and local community participation, the following options and modalities are proposed for the Committee's consideration.

51. Regarding scale of support, it is proposed that subject to budgetary means 11 representatives of indigenous and local populations be funded to participate in each Committee session.

52. The following selection criteria are proposed for consideration:

(a) the recipients of funding should be authorized representatives of indigenous and local communities and their organizations;

(b) funding recipients should be unable to attend meetings of the Committee without the financial assistance;

(c) funding recipients should be able to contribute to the Committee's discussions by virtue of knowledge and experience with intellectual property generally and/or, more specifically, the protection of traditional knowledge and cultural expressions, and/or access to genetic resources and benefit-sharing. The funded recipients for each session should, as a group, have expertise and/or experience in all three of the Committee's themes;

(d) the selection of recipients for each session should as far as possible secure a broad geographical distribution and gender equity;

(e) funding recipients should preferably be persons living in their own community and country and able to report back to and receive instructions from their community;

(f) the communities and organizations should already be accredited to WIPO as observers, or have received *ad hoc* accreditation to the Committee;

(g) the selection of funding recipients should strike a balance between maintaining a degree of continuity between Committee sessions and the need for equity in ensuring a diversity of persons receive funding.

53. Regarding the source of funds, the Committee could select either (i) indirect funding of the WIPO regular budget (Option 1); or, (ii) the establishment of a WIPO Voluntary Fund (Option 2).

<sup>32</sup> A/RES/57/191.



54. In the event that Option 2 is selected, an application process would be established and a mechanism would be required to select funding recipients. In regard to such a selection mechanism, the Committee could select one of the following:

- (i) A WIPO Board of Trustees (Option 2A);
- (ii) Regional coordinators (Option 2B).

*55. The Committee is invited to consider:*

*(i) the above proposals for general enhancement of the participation of indigenous and local communities in its work, including on the submission of comments and other material by observers, and concerning the participation of the Permanent Forum on Indigenous Issues; and*

*(ii) whether to recommend in principle the funding of indigenous and local communities' participation, and if so, what options are appropriate for the scale of support, capacity of participation, selection criteria, source of funds and selection mechanism.*

[Annex follows]

## ANNEX

The United Nations Voluntary Fund for Indigenous Populations

1. The United Nations Voluntary Fund for Indigenous Populations assists representatives of indigenous communities and organizations to participate in sessions of the Working Group on Indigenous Populations of the Sub -Commission on the Promotion and Protection of Human Rights, the Working Group of the Commission of Human Rights on the Draft United Nations Declaration on the Rights of Indigenous Peoples and of the Permanent Forum on Indigenous Issues, by providing them with financial assistance, funded by means of voluntary contributions from Governments, non- governmental organizations and other private or public entities.<sup>1</sup>

*Board of Trustees*

2. A Board of Trustees advises the Secretary -General of the United Nations on the administration of the fund. In particular, the recipients of funding are initially selected by the Board of Trustees. The names of the selected recipients are communicated to the Secretary General for his approval. In other words, the Board recommends to the Secretary General who then approves the selection.

3. The Board is comprised of five members, all who serve in their personal capacity as United Nations experts. They are appointed by the Secretary -General, in consultation with the Chairman of the Sub -Commission on the Promotion and Protection of Human Rights, for a three -year renewable term.<sup>2</sup>

4. Although the members of the Board are not required to be indigenous persons, one member of the Board is to be a representative of a widely recognized organization of indigenous populations.<sup>3</sup> All the current members of the Board are indigenous persons or members of a local community. The Board members are selected on the basis of their experience in human rights and indigenous issues.

5. The Board meets once a year during March/April, in Geneva, for three days at a time, to select the funding recipients who are selected for a calendar year at a time. Due to the numerous applications received for funding, all applications must be received in October to be considered for the following year.

6. The Office of the High Commissioner for Human Rights (OHCHR) serves as the Fund's and the Board's Secretariat. Two professional staff members and an administrative staff member, supplemented by an intern during particularly busy periods, administer the Fund and service the Board. Their tasks include:

<sup>1</sup> General Assembly resolutions 40/131 of 13 December 1985, 50/156 of 21 December 1995, 56/140 of 19 December 2001. See also Document E/CN.4/Sub.2/AC.4/2000/4.

<sup>2</sup> E/CN.4/Sub.2/AC.4/2000/4, paragraph 5.

<sup>3</sup> The five members who have been appointed by the Secretary -General for a three -year renewable term ending December 31, 2005 are: Victoria Tauli Corpuz (Cordillera community, Philippines), José Carlos Morales Morales (Bribri community, Costa Rica), Nadir Bekirov (Crimean Tartar community, Ukraine), Lars Anders Baer (Sami community, Sweden), and Ahmed Mahiou (Kabyle community, Algeria).

- (a) dissemination of information on the Fund among indigenous groups around the world;
- (b) receiving and evaluating all the applications for funding (of which there were 582 in 2002, for example), and following up with applicants if necessary to obtain missing information or clarify information in the applications;
- (c) preparing the applications for review by the Board;
- (d) organizing the meetings of the Board;
- (e) liaising with the office of the Secretary - General in order to communicate the recommendations of the Board and obtain the Secretary - General's selections;
- (f) corresponding with successful and unsuccessful applicants;
- (g) reporting on the Fund's activities to the Working Group on Indigenous Populations, the Working Group on the Draft Declaration and the Permanent Forum; and,
- (h) fund-raising.

7. In accordance with the United Nations rules and regulations, 28 percent of the money available in the Fund must be set aside for administrative and related purposes (13 percent for Programme Support Costs and 15 percent for Operating Cash Reserves).

#### *Criteria for selection of beneficiaries*

8. Persons eligible to receive funding from the Voluntary Fund must be:
- representatives of indigenous populations' organizations and communities who, in the opinion of the Board, are unable to attend the meetings concerned without the assistance of the Fund;
  - able to contribute a deeper knowledge to the working group of the problems affecting indigenous populations;<sup>4</sup>
  - persons who would secure a broad geographical representation.

9. It can be noted that no accreditation is required to participate in sessions of the Working Group on Indigenous Populations and the Permanent Forum. However, for sessions of the Draft Declaration Working Group, only representatives of organizations that are in consultative status with the Economic and Social Council or are authorized by the Committee on Non-Governmental Organizations of the Council may participate.<sup>5</sup>

#### *Practices and guidelines*

10. The following practices and guidelines have been developed by the Board:
- applicants for funding should be indigenous and the organization nominating him or her should also be an indigenous organization (as noted earlier, applicants can be representatives of indigenous organizations and communities);
  - the Board selects both representatives who have never participated in these sessions concerned and representatives who have participated and who could develop specialized

<sup>4</sup> E/CN.4/Sub.2/AC.4/2002/6, Annex I.

<sup>5</sup> Commission on Human Rights Resolution 1995/32.

- capacity and strengthen the core group of participants in the sessions;
- the Board considers a maximum of two applicants per organization;
- applicants not having a letter of support signed by an executive official or body of their indigenous organization or community will not be considered. Self-supporting letters will also not be considered;
- applicants must fill out, sign and date application forms enclosing the letter of support (to be submitted only in the working languages of the Board's Secretariat, i.e. English, French and Spanish);
- indigenous organizations and communities are encouraged to consider gender balance and to nominate young persons.

11. In 2002, the Board recommended that a new selection criterion be adopted according to which the Board would give priority to applicants living in their own community and country over applicants living abroad.<sup>6</sup>

12. Former beneficiaries of the OHCHR Indigenous Fellowship Programme are encouraged to apply for grants and represent their indigenous organizations or communities.

13. Applicants are requested to indicate their responsibility within their organization or community.

#### *The Fund*

14. The names of the donors to the Fund and the amount of their contributions are published by the OHCHR. The number of persons receiving funding depends each year upon the amount of contributions received. In 2002, the Board considered 232 new admissible applications for grants to attend the twentieth session of the Working Group on Indigenous Populations, 27 new admissible grants for representatives to attend the eighth session of the working group established by the Commission on Human Rights in its resolution 1995/32 to elaborate a draft United Nations Declaration on the Rights of Indigenous Peoples<sup>7</sup>, and 323 admissible applications to attend the first session of the Permanent Forum on Indigenous Issues.

15. The Board recommended in 2002, 78 travel grants allowing representatives of indigenous communities and organizations to attend the Working Group on Indigenous Populations, 16 travel grants allowing representatives of indigenous communities and organizations to attend the working group on the draft United Nations Declaration on the Rights of Indigenous Peoples<sup>8</sup>, and 25 travel grants to attend the first session of the Permanent Forum on Indigenous Issues.

<sup>6</sup> E/CN.4/Sub.2/AC.4/2002/6, paragraph 17.

<sup>7</sup> E/CN.4/Sub.2/AC.4/2002/6, paragraph 14.

<sup>8</sup> E/CN.4/Sub.2/AC.4/2002/6, paragraph 15.

*Additional comments*

16. The Secretariat and the members of the Board organize information meetings for the grant recipients to remind them of the requirement that they should attend and participate in all meetings of the working group. They also organize additional meetings for indigenous representatives to explain how to apply for grants from the Fund.<sup>9</sup>

[End of Annex and of document]

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<sup>9</sup> E/CN.4/Sub.2/AC.4/2000/4, paragraph 14 and 15.